INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTION PRESENTED	2
STATUTES INVOLVED IN THE CASE .	2
STATEMENT OF THE CASE	4
1. Procedural History of the Case	4
2. Facts Material to the Questions Presented . . .	5
BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE	7
ARGUMENT FOR ALLOWANCE OF WRIT .	7
(a) Conflict in Circuit Courts	7
(b) Important Question of Federal Law	8
CONCLUSION	12
APPENDIX	13

TABLE OF CITATIONS

	Page
Commissioner of Internal Revenue v. Kelly's Estate, 84 F.2d 958 (CCA 7, 1936)	8
Glasser v. Commissioner of Internal Revenue, 69 F.2d 254 (CCA 8, 1934)	8
Latty v. Commissioner, 62 F.2d 952 (CCA 6, 1933)	8

INDEX TO APPENDIX

APPENDIX A
Opinion of the United States Tax Court . . . . . .

APPENDIX B
Decision of the United States Tax Court . . . . . .

APPENDIX C
Opinion of the United States Court of Appeals for the Fourth Circuit . . . . . .

IN THE SUPREME COURT OF
THE UNITED STATES

No. ____

LEONARD SUTTON, Executor of the
Estate of Sam Sutton,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE
FOURTH CIRCUIT

Petitioner, Leonard Sutton, Executor of the Estate of Sam Sutton, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit rendered in the above styled case on 19 June 1974.

OPINIONS BELOW

A memorandum finding of fact and opinion was filed by the United States Tax Court on 24 September 1973 and is Appendix A hereto. A decision in favor of the respondent was entered by the United States Tax Court on 24 September 1973 and is Appendix B hereto. An opinion of the United States Court of Appeals for the Fourth Circuit was issued 19 June 1974 and is Appendix C hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was issued on 19 June 1974 affirming the 24 September 1973 United States Tax Court decision in favor of the respondent.

Petitioner has no further appellate remedy under the laws of the United States.

The jurisdiction of this Court is involked under 28 USC 1254(1).

QUESTION PRESENTED FOR REVIEW

Whether an estate is entitled to claim a debt as a deduction in its Federal Estate Tax return when that debt is based upon an antenuptial agreement in which each party agreed, inter alia, that the survivor would receive a specific monthly annuity from the estate of the first to die.

STATUTES INVOLVED IN THE CASE

Internal Revenue Code of 1954 (26 USC):

26 USC 2043, (b) Marital rights not treated as consideration. -- For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

26 USC 2053, (a) General rule. -- For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts--

(1) for funeral expenses
(2) for administration expenses,
(3) for claims against the estate, and
(4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

26 USC 2053(c)(1)(A) Consideration for claims. -- The deduction allowed by

this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 2055 for the purpose specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 2055 if such promise or agreement constituted a bequest.

STATEMENT OF THE CASE

1. Procedural History of the Case

Petitioner filed an estate tax return with the Commissioner of Internal Revenue and claimed the value of the annuity of the surviving spouse as a marital deduction under Section 2056 of the Internal Revenue Code of 1954. The deduction was disallowed by the Commissioner. Petitioner brought an action on 26 November 1971 in the United States Tax Court asking the court to allow the marital deduction as claimed in the estate tax return or in the alternative to allow petitioner to claim the value of the annuity of the surviving spouse as a debt of the estate under Section 2053 of the Internal Revenue Code of 1954. The Tax Court on 24 September 1973 declined to

allow the deduction under either section and entered judgment against the petitioner.

Petitioner docketed an appeal of that decision in the United States Court of Appeals for the Fourth Circuit on 25 January 1974. Briefs were filed and oral argument made and on 19 June 1974 the Court of Appeals affirmed the determination of the Tax Court. Petitioner has no further remedy for review save the grant of the petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

FACTS MATERIAL TO THE QUESTION PRESENTED

1. The pertinent facts for the purpose of the appeal are not in dispute and were submitted on stipulation of the parties.

2. On 17 November 1965 Sam Sutton, (hereafter referred to as Sam) 65 years old and a widower entered into an antenuptial agreement with Helen Eisenson, (hereinafter referred to as Helen) 59 years old and a widow.

3. At the time of the antenuptial agreement between Sam and Helen, Sam's assets were valued at $296,946.75 and Helen's assets were valued at $46,450.00 and each had full knowledge of the other's assets.

4. Under the terms of the antenuptial agreement Helen waived any right she might acquire at any time in the property of Sam by reason of the marriage,

and Sam made a reciprocal waiver as to Helen's property.

5. Under the terms of the agreement Sam and Helen relinquished any "inheritance rights" either might acquire by reason of marriage in the estate of the other.

6. Under the terms of the agreement Sam's estate was obligated to pay Helen the sum of Four Hundred ($400.00) Dollars a month for the rest of her life if he predeceased her, and Helen's estate was obligated to pay Sam the sum of Fifty ($50.00) Dollars a month for the rest of his life if she predeceased him.

7. Sam and Helen married on 18 December 1965 and on 19 August 1967 Sam, a citizen of the United States and a resident of Norfolk, Virginia, died. Surviving Sam as his closest relation and next of kin was his widow, Helen, and his son, Leonard Sutton, who became Executor of Sam's estate.

8. Sam's last will and testament was executed 8 June 1967 and admitted to probate 23 August 1967 in the Circuit Court of the City of Norfolk, Virginia. By his will Sam directed his executor to pay over to Helen Four Hundred ($400.00) Dollars a month and this provision was in accord with the terms of the antenuptial agreement. Additionally Sam bequeathed to Helen all of the household furnishings and furniture contained in Sam's home. The rest, residue and remainder of Sam's estate was left to his son, Leonard Sutton.

9. No specific asset or portion of the estate was designated or directed by Sam to be set aside to satisfy the monthly payments due Helen under the terms of the antenuptial agreement and the same are payable out of the residue of Sam's estate.

10. In his petition before the United States Tax Court the executor claims a deduction as a debt of Sam the present value of the payments due Helen pursuant to the terms of the antenuptial agreement which he alleges to be approximately $55,000.00. This deduction was denied by the Commissioner.

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

After receipt of notice of determination by the Commissioner of Internal Revenue that Sam's Estate Tax was deficient in the amount of $21,725.23, taxpayer petitioned the United States Tax Court for a redetermination of any deficiency. United States Federal jurisdiction was based on Section 6213(a) of the Internal Revenue Code of 1954, 26 USC 6213(a).

ARGUMENT FOR ALLOWANCE OF WRIT

(a) The decision of the United States Court of Appeals for the Fourth Circuit is in conflict with the test established by the United States Court of Appeals for the Sixth Circuit in Latty v. Commissioner, 62 F.2d 952 (1933).

In Latty v. Commissioner, supra, the Court considered whether a claim of a daughter against the estate of Latty was "contracted bona fide and for a fair consideration in money or money's worth" and thereby be either allowed or disallowed as a deduction against the estate of Latty. The court stated on page 954, "...we think that ordinarily these words must be construed to evidence an intent upon the part of Congress to permit the deduction of claims only to the extent that such claims were contracted for a consideration which at the time either augmented the estate of the decedent, granted to him some right or privilege he did not possess before, or operated to discharge a then existing claim, as for breach of contract or personal injury."

The language of the Latty case, supra, was followed in Glasser v. Commissioner of Internal Revenue, 69 F.2d 254, 256 (CCA 8, 1934), and cited in Commissioner of Internal Revenue v. Kelly's Estate, 84 F.2d 958, 964 (CCA 7 1936).

Because of the differing positions of the United States Court of Appeals of the Sixth Circuit and the Fourth Circuit, the issue should be considered by the Supreme Court and a rule of law established to bring uniformity throughout the federal courts.

(b) That decision has settled as important question of federal law which has not been, but should be settled by the Supreme Court.

In the case at bar Sam and Helen has each married and lost their spouses. Each had raised a family, had acquired significant estates, and determined to marry. Before marriage, they determined to settle their respective estates and each made a full disclosure of all assets and their value to the other. They agreed in advance of marriage to relinquish any marital rights in the estate of the other that might arise as a result of the marriage of the parties and the subsequent death of one spouse. They further exchanged mutual promises of annuity to be paid the survivor out of the estate of the first to die. Sam bound his estate to pay Helen Four Hundred ($400.00) Dollars a month for the rest of her life if she survived him and Helen bound her estate to pay Sam Fifty ($50.00) Dollars a month for the rest of his life if he survived her.

Sam and Helen, by a legally binding prenuptial agreement bargained the preservation of their respective estates, leaving for testamentary disposition the bulk of each estate. Accordingly, they were able to enter into a marriage during the later years of their lives without substantially altering the premarriage status of their respective estates. This they had a perfect legal right to do. Sam, a moderately wealthy man, could will the bulk of his estate to his adult son secure in the knowledge that a marriage in the senior years of his life would not materially alter the premarriage status of a father and his only son and heir.

When on Sam's death, Helen asserted

her claim to the bargained annuity, the Internal Revenue authorities declined to deduct the value of Helen's claim against the estate of Sam stating, in effect, it did not qualify as a deductable claim because Helen had not given as consideration for her claim a contingent annuity which was equal in dollars and cents value to the contingent annuity she was to receive. To the extent of the tax deficiency involved in this matter, Sam's estate will be depleted, not by any gain to Helen, but by a loss to Sam's son. If the decision of the United States Tax Court as affirmed by the United States Court of Appeals for the Fourth Circuit is permitted to stand, a major distortion of the Federal estate tax laws will be accomplished.

Why is this an important question of Federal law which deserves the attention of the highest court of the land? Not because Sam's son, as executor and primary beneficiary will have to pay an estate tax deficiency in excess of $21,000.00, but because of the wide ranging effect such a ruling would have on the rapidly increasing numbers of citizens who find themselves in the situation of Sam and Helen. Their plans at estate preservation for the members of the family who have shared the hardships and privations of the successful businessman in the early years of his struggle for success are in part thwarted because of the strained contruction given an enactment of Congress.

The construction advanced by petitioner, it is submitted is consistent with a reasonable interpretation of the

statutes and encourages marriages of older persons while preserving the estate of each party. Such marriages can only benefit by being founded solely on love, respect, and a desire for true companionship unaffected by any nagging suspicion that the marriage was entered into by either party for financial gain.

An important segment of the federal law in estate taxation has not been settled by this Court and if not settled, the decision of the Court of Appeals for the Fourth Circuit will adversely affect increasing numbers of taxpayers. It is submitted, that with the increased life span of the citizens of the United States, the number of late second marriages will increase and when those marriages are based on love, respect, and a desire for true companionship, harmony is promoted in our society.

Such future partners should be able, after full disclosure of their respective assets, to enter into a prenuptial agreement that will effectively fix the interest of each in the estate of the other and when such agreement includes an exchange of reciprocal promises to bind each estate to a claim of the survivor, such claims having been negotiated as a result of a bargain of the parties openly arrived at on terms suitable to each and where the consideration passing to either is not limited to the relinquishment of marital rights, the value of the claim ought to be allowed as a proper deduction from the estate of the first to die.

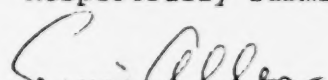
It is submitted it was not the

intention of Congress to deny the deduction of such claims from the taxable estate of a decedent. If Congress wanted in estate taxation to exclude from the definition of the term "full and adequate consideration in money or money's worth" those transactions arising out of a premarital agreement, it could have done so, however, Congress chose only to exclude those transactions, made at any time, wherein the consideration was the relinquishment of "marital rights." A significant group of the population is affected and that group is increasing rapidly in numbers. A decision by the Supreme Court on this important issue will permit them to make mature, businesslike plans for the preservation of their estates.

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari should be granted and that the decision of the Court of Appeals for the Fourth Circuit should be reversed with the direction to enter judgment on behalf of the petitioner.

Respectfully submitted,



LOUIS B. FINE and
LEWIS ALLEN
Counsel for Leonard Sutton, Executor of the Estate of Sam Sutton

FINE,FINE,LEGUM & FINE
720 Law Building
Norfolk, Virginia 23510